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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CORNELL GREATHOUSE, Plaintiff and Appellant, v. CITY OF PASADENA, Defendant and Respondent.	B204622 (Los Angeles County Super. Ct. No. BC346152)

APPEAL from an order and judgment of the Superior Court of Los Angeles County, Ralph W. Dau, Judge. Affirmed.

Longo & Longo, Lawrence M. Longo and Frank J. Longo for Plaintiff and Appellant.

Michele Beal Bagneris, City Attorney, Frank L. Rhemrev, Assistant City Attorney, for Defendant and Respondent.

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INTRODUCTION

This action arises from the arrest of plaintiff and appellant Cornell Greathouse (plaintiff or Mr. Greathouse) by police officers employed by defendant and respondent City of Pasadena (City). Plaintiff claims that in the course of arresting him, the police officers committed a number of common law torts and violated his civil rights. He also alleges that the City violated his civil rights by failing to properly train its police officers. The jury returned a verdict against plaintiff with respect to all of his claims against the individual officers, and in favor of plaintiff with respect to his claim against the City. The trial court, however, granted the City's motion for judgment notwithstanding verdict (JNOV). Plaintiff appeals the order granting the City's motion for JNOV and the judgment in favor of the City. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Plaintiff's Physical Condition*

In June 1993, plaintiff was shot in the throat while at a party. He was hit by a stray bullet that came from across the street where a gang fight took place. The injury left him a quadriplegic. Although plaintiff has limited movement of his shoulders, arms, wrists and hands, he needs assistance to travel in his wheelchair and cannot grip anything. Plaintiff also needs assistance to get in and out of his wheelchair. There is an effective and appropriate technique of removing plaintiff from his wheelchair that does not cause plaintiff pain.

2. *The Incident*

On January 30, 2005, the Pasadena Police received an anonymous tip that at McGrew Alley in Pasadena there were four black males, one in a wheel chair, that were involved in an argument that sounded like it would escalate into a physical fight. Officers Peter McHugh and Ryan Smith were dispatched to investigate. When they arrived at McGrew Alley, McHugh and Smith found Patrick Young, Abdullah Rahman, and plaintiff Cornell Greathouse, who was in a wheelchair. Young, Rahman, and Greathouse are African-American males.

When Officer McHugh arrived at the scene, he recognized plaintiff and said "Hello Cornell" to plaintiff. Subsequently, Sergeant Michael Bugh and Officers Nicole Bazzo and Mario Calderon joined Officers McHugh and Smith at the scene at McHugh's request. Plaintiff was taken out of his wheelchair so that the police officers could conduct a search for a weapon. After plaintiff complained that he was in pain, he was taken to a hospital, where he spent the next six days. Plaintiff testified that he suffered enduring physical and emotional harm as a result of the incident.

A. *Plaintiff's Version of the Incident*

The parties hotly dispute many of the facts about the incident which resulted in plaintiff's hospitalization. Plaintiff's version of the incident is as follows. When the police arrived at the scene, plaintiff and his friends Mr. Young and Mr. Rahman were "laughing" and "clowning around." Plaintiff had consumed two beers. Although plaintiff informed the officers that he and his friends were not arguing and that he did not have a gun, the officers advised him that they would search him anyway. Plaintiff denies that the officers ever told him he was under arrest. He also denies making any threatening statements or gestures towards the officers.

Plaintiff alleges that the officers grabbed his hands and held them on the sides of the wheelchair. This caused plaintiff a great deal of pain because his body was not used to moving that way. It also caused a strong contraction in plaintiff's stomach, and made him urinate on himself.

The officers then tried to lift plaintiff out of the wheelchair but were unable to handle his weight. When the officers attempted to place plaintiff back in the wheelchair, the wheelchair fell from under plaintiff and plaintiff hit the ground. The officers then pulled plaintiff by the arms and dragged him on the ground "like a sack" to a nearby wall.

Plaintiff was then pushed over the wall, resting his stomach on top of it. Officer Bazzo balanced plaintiff on the wall by placing her hand on plaintiff's back. Plaintiff was hanging over the wall for 10 minutes, or longer. While hanging over the wall, plaintiff experienced numbness and substantial pain.

In the meantime, plaintiff's pants fell to his knees and his bare buttocks was exposed, causing plaintiff to feel "disrespected" and "embarrassed." The officers did not pull up plaintiff's pants, even though a small crowd had assembled to watch the incident.

Plaintiff claims that he repeatedly advised the officers that he was in pain, and that he needed medical attention. The officers, however, allegedly told plaintiff that he was faking his pain, and thus they initially refused to summon medical attention for plaintiff.

B. *The City's Version of the Incident*

The City's police officers tell a very different story. Their version of the facts is as follows. When they arrived at the scene, they found Greathouse, Young and Abdullah talking "loudly." Plaintiff showed signs of intoxication. In response to the police officers' inquires, plaintiff was belligerent, verbally abusive[1] and uncooperative. For example, plaintiff continued reaching between his legs under his seat area, even after he was told not to do so.[2] Plaintiff also said something to the effect that "if he had a gun under his wheelchair or seat . . . he would beat [the police officers] up . . . ." At one point, plaintiff was "simulating a gun" with his hand.

After advising plaintiff he was being arrested for being drunk in public, the officers held a conference regarding how to search plaintiff and his wheelchair for weapons. The officers then tried to stand plaintiff up. However, plaintiff was too heavy to support, so they sat him back down in his wheelchair. After another conference, the officers pushed plaintiff's wheelchair towards a nearby wall, removed plaintiff from the wheelchair, and placed him against (not over) the wall. The officers found no weapons.

3. *Police Training*

The City's police officers received training at a police academy. Although the officers received general training regarding dealing with people with disabilities, they did not receive specific training regarding how to search, arrest or remove a person with

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[1] Plaintiff allegedly said: "Everything is fine, you can get the fuck out of here."

[2] Plaintiff claims he needs to keep his hand between his legs to keep his balance, and to avoid rocking forward.

quadriplegia sitting in a wheelchair.[3] Rather, the officers were instructed to use "common sense, care and due regard" on a case-by-case basis.

4. *Procedural History*

In January 2006, plaintiff filed a Complaint for Damages against McHugh, Smith, Bugh, Bazzo and the City based on injuries he allegedly sustained as result of the above-described incident. In his First Amended Complaint, the operative pleading, plaintiff alleged common law causes of action against the individual officers.[4] Plaintiff also asserted two causes of action for violation of civil rights pursuant to 42 United States Code section 1983 (section 1983) against the City and the individual defendants.

The case was tried before a jury in October 2007. At trial, plaintiff asserted numerous causes of action against the individual defendants and one cause of action for "deprivation of civil rights—failure to train" against the City.[5] The jury returned a verdict in favor of the individual defendants on all of plaintiff's claims against them. However, the verdict was in favor of plaintiff on plaintiff's civil rights claim against the City. Plaintiff was awarded damages in the amount of $28,939.12 for past medical expenses, and in the amount of $50,000 for past noneconomic loss.

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[3] The City's policy manual does not have specific instructions on this subject.

[4] Plaintiff asserted causes of action against the individual defendants for assault, battery, false arrest, false imprisonment, intentional infliction of emotional distress, invasion of privacy, and negligence.

[5] The jury instruction on this claim stated in part: "To establish this claim, which is called deprivation of civil rights—failure to train, Mr. Greathouse must prove all of the following: [¶] 1. That City of Pasadena's training program was not adequate to train its officers to properly handle usual and recurring situations; [¶] 2. That City of Pasadena was deliberately indifferent to the need to train its officers adequately; [¶] 3. That the failure to provide proper training was the cause of the deprivation of Mr. Greathouse's right to medical attention; [¶] 4. That Mr. Greathouse was harmed; and [¶] 5. That City of Pasadena's failure to adequately train its officers was a substantial factor in causing Mr. Greathouse's harm."

In November 2007, the City filed a motion for JNOV, wherein it asserted two main arguments. The first was that as a matter of law, the City could not be held liable for violation of civil rights under *Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658 (*Monell*), because the individual defendants were exonerated of civil rights violations. The City also argued that there was no evidence that plaintiff was deprived of his civil rights as a result of the City's failure to train its officers.

In December 2007, the trial court granted the City's motion for JNOV, and entered judgment against plaintiff and in favor of the City. In its order granting the motion, the court rejected the City's first argument but agreed with its second. Plaintiff filed a timely appeal of both the court's order granting the City's motion and the judgment.

CONTENTIONS

As we have stated, plaintiff's sole cause of action at trial against the City was for violation of civil rights pursuant to section 1983. Plaintiff's claim was based on the City's alleged failure to train its police officers regarding the proper means of searching quadriplegics and people in wheelchairs. This failure, plaintiff contends, resulted in a deprivation of his right to receive necessary medical attention while in police custody. On appeal, plaintiff contends that the trial court erroneously granted the City's motion for JNOV because there was substantial evidence supporting his cause of action for deprivation of civil rights.[6]

DISCUSSION

1. *Standard of Review*

"A motion for judgment notwithstanding verdict may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support." (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.) Thus when we review a motion for JNOV, "we resolve

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[6] The City disputes that contention. It also argues that the judgment should be affirmed because the trial court erroneously rejected its argument based on the exoneration of the individual officers. We need not reach that issue because we reject plaintiff's argument on appeal.

all conflicts in the evidence and draw all reasonable inferences therefrom in favor of the verdict." (*California Service Station etc. Assn. v. American Home Assurance Co.* (1998) 62 Cal.App.4th 1166, 1171.) "In so ruling, we are not bound by the trial court's reasons; if correct upon any theory of applicable law, the JNOV must be affirmed." (*Ibid*.)

2. *There Was Insufficient Evidence to Support Plaintiff's Civil Rights Claim Against the City of Pasadena*

A local governmental entity such as City cannot be liable under section 1983 unless a plaintiff's civil rights have been violated as a result of the entity's official policy. (*Monell, supra*, 436 U.S. at p. 694.) For a local entity to be liable under section 1983, its official policy need not be affirmatively stated or implemented. Rather, "a local governmental body may be liable if it has a policy of inaction and such inaction amounts to a failure to protect constitutional rights." (*Oviatt v. Pearce* (9th Cir. 1992) 954 F.2d 1470, 1474.)

In *Canton v. Harris* (1989) 489 U.S. 378 (*Canton*), the plaintiff, like Mr. Greathouse, sought to hold a city "liable under 42 U. S. C. § 1983 for its violation of [the plaintiff's] right, under the Due Process Clause of the Fourteenth Amendment, to receive necessary medical attention while in police custody." (*Id.* at p. 381.) In adjudicating that claim, the United States Supreme Court set forth the circumstances under which a city could be liable under section 1983 for failure to train its police officers.

The Supreme Court held: "[T]he inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. This rule is most consistent with our admonition in *Monell* . . . that a municipality can be liable under § 1983 only where its policies are the 'moving force [behind] the constitutional violation.' Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983. . . . '[M]unicipal liability under § 1983 attaches where–and only where–a

deliberate choice to follow a course of action is made from among various alternatives' by city policymakers." (*Canton, supra,* 489 U.S. at pp. 388-389, fn. omitted.)

"It may seem contrary to common sense to assert that a municipality will actually have a policy of not taking reasonable steps to train its employees. But it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury." (*Canton, supra,* 489 U.S. at p. 390, fns. omitted.)

"In resolving the issue of a city's liability, the focus must be on adequacy of the training program in relation to the tasks the particular officers must perform. That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program. . . . It may be, for example, that an otherwise sound program has occasionally been negligently administered. Neither will it suffice to prove that an injury or accident could have been avoided if an officer had had better or more training sufficient to equip him to avoid the particular injury-causing conduct. Such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the usual and recurring situations with which they must deal. And plainly, adequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the city liable." (*Canton, supra,* 489 U.S. at pp. 390-391.)

Under the standard set forth in *City of Canton*, the City was not liable to Mr. Greathhouse as a matter of law. There was no evidence that searching and arresting quadriplegics or other persons in wheelchairs was an "usual and recurring" situation that the City police officers dealt with. Indeed, there was no evidence that prior to the

incident in question, Pasadena police officers had ever searched or arrested a quadriplegic or other person in a wheelchair.

There was also no evidence showing that the need for more or different training regarding searching or arresting quadriplegic persons or persons in wheelchairs was so obvious that the lack of training was likely to result in the violation of the constitutional rights of such persons to receive appropriate medical care while in police custody. In fact, there was no evidence that, prior to the incident in question, such persons had ever been injured or denied medical attention as a result of any act or omission by Pasadena police officers. Therefore, there was no factual basis upon which the jury could determine that the City was deliberately indifferent to plaintiff's constitutional rights, i.e., that the City policymakers made a deliberate choice to follow a course of action that resulted in the deprivation of plaintiff's constitutional rights.

Plaintiff claims that "Pasadena Police Department officers frequently were required to search people in wheelchairs, including quadriplegics." The evidence cited by plaintiff, however, does not support this claim. Plaintiff cites evidence that Officers McHugh and Calderon and Sergeant Bugh previously knew plaintiff by name, and that they knew that plaintiff was a quadriplegic. Plaintiff further cites evidence that he had been previously convicted of felonies, and that the police officers claimed they searched plaintiff on January 30, 2005 (the incident at issue in this case), because plaintiff was under arrest for being drunk in public. None of this evidence shows that Pasadena police officers searched or arrested a person in a wheelchair or a quadriplegic, including Mr. Greathouse, prior to the incident which gave rise to this suit.

Plaintiff also relies on testimony of his expert witness, Captain Robert Fonzi of the San Bernardino Sherriff's Department. Mr. Fonzi testified that he had searched quadriplegics "in corrections."[7] This testimony, however, does not constitute evidence that police officers *employed by the City* had previously searched or arrested quadriplegics or people in wheelchairs.

Plaintiff further relies on the testimony of Officer Bazzo. Ms. Bazzo testified that while she was working as a police officer *for the County of Los Angeles*, she used the same method of lifting individuals out of wheelchairs as the City police officers used to lift Mr. Greathouse on January 30, 2005.[8] She did not, however, state that prior to the incident in question, *while she was employed as a Pasadena police officer*, she had searched or arrested a person in a wheelchair or a quadriplegic.

Finally, plaintiff relies on the trial court's order granting the City's JNOV motion. The trial court, however, made no findings that support plaintiff's position. Instead, the trial court stated: "There was also no evidence that Mr. Greathouse or any other quadriplegic persons had been previously injured in searches conducted by Pasadena police officers, and it is not obvious as a matter of law that a police department should conduct such training, which might differ depending on the size and weight of the individual."[9] We agree with the trial court's analysis.

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[7] Mr. Fonzi testified as follows: "Q. [H]ow many contacts have you made with individuals? [¶] . . . [¶] A. Hundreds, thousands. [¶] Q. And how many have been with quadriplegics? [¶] A. In 26 years, I don't know that I've had one in the field. I've had them in corrections, but not necessarily in the field."

[8] As of the date of the incident, Officer Bazzo had been employed with the Pasadena Police Department for four years. She was previously a deputy with the Los Angeles County Sheriff's Department for five years, where she was assigned to work "in the jails and with medical or mental patients."

[9] Plaintiff's medical expert testified that different quadriplegics injured in the same area will have different disabilities.

DISPOSITION

The order granting the City's motion for JNOV and the judgment in favor of the City and against plaintiff are affirmed. The City is awarded costs on appeal.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.